

ST 06-12

Tax Type: Sales Tax

Issue: Responsible Corporate Officer – Failure to File or Pay Tax

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

**JOHN DOE as
Responsible Officer of
ABC Luxury Cars, Inc.,
Taxpayer**

**No. 05-ST-0000
IBT 0000-0000
NPL: 0000**

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Michael J. Robins, Robins & Associates, Ltd. appearing on behalf of John Doe; Mr. George Foster, Special Assistant Attorney General, appearing on behalf of the Department of Revenue of the State of Illinois.

Synopsis:

This matter comes on for hearing pursuant to John Doe's protest of Notice of Penalty Liability No. 0000 (hereinafter "NPL") as responsible officer of ABC Luxury Cars, Inc. (hereinafter "ABC"). The NPL represents a penalty liability for retailers' occupation tax of ABC due to the Department for April, June, July and October of 2001. An evidentiary hearing was held in this matter on November 10, 2005 with Mr. Doe testifying.¹ Following submission of all

¹ The evidentiary hearing was held before Administrative Law Judge Charles McClellan who has since left the Office of Administrative Hearings.

evidence and a review of the record, it is recommended that the NPL be cancelled. In support thereof, the following “Findings of Fact” and “Conclusions of Law” are made.

Findings of Fact:

1. The Department’s *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of NPL No. 8947 dated March 15, 2004, which shows a penalty for sales tax liability of ABC Luxury Cars, Inc. of \$22,241.78 for April, June, July and October of 2001 Tr. pp. 5-6; Dept. Ex. No. 1.
2. Articles of Incorporation for ABC dated July 19, 1999 show Mr. Jones as registered agent and sole director. The Articles are signed by Mr. Jones. Mr. Doe’s name does not appear in the Articles. Tr. p. 7; Taxpayer’s Ex. No. 1.
3. ABC’s NUC-1, “Illinois Business Administration,” filed August 30, 1999 lists Mr. Jones as president, vice-president and secretary. Mr. Jones accepted personal responsibility for the filing of returns and the payment of taxes in question 14 of the form. The form is signed by Mr. Jones. Mr. Doe’s name does not appear in the NUC-1. Tr. pp. 7-8; Taxpayer’s Ex. No. 2.
4. ABC’s “Domestic Corporation Annual Report” filed September 27, 2000 lists Mr. Smith as president and secretary and is signed by Mr. Smith. Mr. Doe’s name does not appear on the Annual Report. Tr. pp. 7-8; Taxpayer’s Ex. No. 3.
5. Mr. Doe’s name does not appear on ST-556, “Sales Tax Transaction Returns,” filed during the period covered by the NPL. Tr. pp. 7-9; Taxpayer’s Ex. No. 5.

Conclusions of Law:

The sole issue to be decided in this case is whether Mr. Doe should be held personally liable for the unpaid retailers’ occupation tax of ABC. 35 ILCS 120 *et seq.* The statutory basis upon

which any personal liability is premised is Section 3-7 of the Uniform Penalty and Interest Act, which provides as follows:

Any officer or employee of any taxpayer subject to the provisions of a tax Act administered by the Department who has the control, supervision or responsibility of filing returns and making payment of the amount of any trust tax imposed in accordance with that Act and who willfully fails to file the return or to make the payment to the Department or willfully attempts in any other manner to evade or defeat the tax shall be personally liable for a penalty equal to the total amount of tax unpaid by the taxpayer including interest and penalties thereon. The Department shall determine a penalty due under this Section according to its best judgment and information, and that determination shall be prima facie correct and shall be prima facie evidence of a penalty due under this Section.
35 ILCS 735/3-7.

It is clear under the statute that personal liability will be imposed only upon a person who: (1) is responsible for filing corporate tax returns and/or making the tax payments; and (2) “willfully” fails to file returns or make payments.

In determining whether an individual is a responsible person, the courts have indicated that the focus should be on whether that person has significant control over the business affairs of a corporation and whether he or she participates in decisions regarding the payment of creditors and disbursement of funds. Monday v. United States, 421 F. 2d 1210 (7th Cir. 1970), *cert. denied*, 400 U.S. 821 (1970). Liability attaches to those with the power and responsibility within the corporate structure for seeing that the taxes are remitted to the government. *Id.*

Mr. Doe testified that he began working for ABC in May, 2001, and he worked there for “three or four months.” Tr. p. 10. His job was to sell cars. Mr. Doe testified that he did not speak or write English very well so he did not “complete any of the paperwork” for the car sales and he

never prepared or signed any tax returns for ABC. Tr. pp. 13, 19, 25. According to Mr. Doe, he never signed a check or a bill of sale and he was not listed as a signatory on ABC's bank accounts. Tr. pp. 14, 23-24. Mr. Doe testified that he was not a shareholder of ABC. During the time he worked at ABC, he received a salary and commissions. Tr. p. 24. He never talked to the owners about tax or financial matters because he could tell the business was "doing good, selling cars, buying cars, selling cars." Tr. p. 26.

I am unable to conclude from the testimony and the evidence admitted at the hearing that Mr. Doe was a responsible officer or employee of ABC, that he had control over the business affairs of ABC or that he participated in decisions regarding the payment of creditors and disbursement of funds. Mr. Doe testified that he was not a shareholder of ABC. His name does not appear on either the Articles of Incorporation, Illinois Business Registration, Domestic Corporation Annual Report or Sales Tax Transaction Returns filed during the period covered by the NPL. Mr. Doe testified that he never signed a check for ABC and never signed or prepared tax returns. Nothing in the cross-examination of Mr. Doe would indicate that his direct testimony was not credible.

WHEREFORE, for the reasons stated above, it is my recommendation that Notice of Penalty Liability No. 0000 be cancelled.

Kenneth J. Galvin
Administrative Law Judge

May 15, 2006